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4 **UNITED STATES DISTRICT COURT**  
5 **SOUTHERN DISTRICT OF CALIFORNIA**  
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7 CHRIS LANGER,

8 Plaintiff,

9 vs.  
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12 MARCIANA NICOLAS-DOLLARD and  
13 DOES 1-10,

14 Defendants.

CASE NO. 14cv1291-LAB (JLB)

**ORDER:**

**1) SUBSTITUTING NAME OF  
DEFENDANT IN CASE CAPTION,  
and**

**2) TO SHOW CAUSE WHY  
PLAINTIFF'S FEDERAL CLAIM  
SHOULD NOT BE DISMISSED AS  
MOOT OR FOR LACK OF  
STANDING**

15 Plaintiff Chris Langer filed his second amended complaint ("SAC") on September 15,  
16 2014 bringing claims under the Americans with Disabilities Act (ADA) and supplemental  
17 state-law claims. (Docket no. 10.) On September 15, 2014, Defendant Marciana  
18 Nicolas-Dollard, proceeding pro se, filed a response to Langer's SAC that the Court  
19 construes as her answer. (Docket no. 12.)

20 **I. Caption**

21 Langer's original complaint names David L. Bentrums and Jerry M. Bentrums as  
22 Defendants. (Docket no. 1.) The Court terminated the Bentrums Defendants after Langer  
23 filed his First Amended Complaints naming only Nicolas-Dollard and ten fictitious parties as  
24 defendants. (Docket no. 4.) Plaintiff's Second Amended Complaint confirms that the  
25 Bentrums Defendants are no longer party to this action. (See Docket no. 10.) Accordingly,  
26 the Court **DIRECTS** the Clerk to reflect this substitution in the case caption.

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## 1 II. Jurisdiction

2 The SAC alleges that Langer is disabled and that he would like to patronize a Strip  
3 Mall containing the Top Gear Guitar Shop, located on University Avenue in La Mesa,  
4 California, but is impeded from doing so by its lack of an ADA-compliant parking lot. (Docket  
5 no. 10.) Nicolas-Dollard's answer attests that the 29-space parking lot has been ADA-  
6 compliant since at least April 8, 2013 – roughly nine months before Langer's alleged visit –  
7 when it was restriped by Jacques Paving Inc. to include two handicapped-accessible parking  
8 spaces, a 96-inch van-accessible parking space, and a 60-inch access aisle. (See *id.* at 2.)  
9 Nicolas-Dollard's answer also attests that the same company restriped the lot again on  
10 August 30, 2014 – roughly nine months after Langer's alleged visit – to widen the access  
11 aisle to 96 inches and add another 96-inch van-accessible parking space. (*Id.* at 3.) Finally,  
12 Nicolas-Dollard attached and annotated eight color pictures, dated June 2014 and available  
13 via the Google Maps “street view” function, which clearly show visible handicapped parking  
14 spaces in the parking lot of the accused strip mall. (*Id.* at 8-15.) See also Google Maps,  
15 [https://maps.google.com/maps?q=Top+Gear+Guitar+Pro+Shop&cbll=32.755612,-117.04](https://maps.google.com/maps?q=Top+Gear+Guitar+Pro+Shop&cbll=32.755612,-117.040816&layer=c&panoid=grhDI6GdRY347Uhswx4i5Q&cbp=12,140.53,,0,-1.5&cid=14531586390159139694&t=m&z=11)  
16 [0816&layer=c&panoid=grhDI6GdRY347Uhswx4i5Q&cbp=12,140.53,,0,-1.5&cid=145315](https://maps.google.com/maps?q=Top+Gear+Guitar+Pro+Shop&cbll=32.755612,-117.040816&layer=c&panoid=grhDI6GdRY347Uhswx4i5Q&cbp=12,140.53,,0,-1.5&cid=14531586390159139694&t=m&z=11)  
17 [86390159139694&t=m&z=11](https://maps.google.com/maps?q=Top+Gear+Guitar+Pro+Shop&cbll=32.755612,-117.040816&layer=c&panoid=grhDI6GdRY347Uhswx4i5Q&cbp=12,140.53,,0,-1.5&cid=14531586390159139694&t=m&z=11).

18 Because Nicolas-Dollard is proceeding pro se, the Court construes her pleadings  
19 liberally. See *United States v. Ten Thousand Dollars (\$ 10,000) in U.S. Currency*, 860 F.2d  
20 1511, 1513 (9th Cir. 1988). Furthermore, pursuant to Rule 56(f) of the Federal Rules of Civil  
21 Procedure, “[a]fter giving notice and a reasonable time to respond, the court may . . .  
22 consider summary judgment on its own after identifying for the parties material facts that  
23 may not be genuinely in dispute.” Fed. R. Civ. P. 56(f)(3); see also *Celotex Corp. v. Catrett*,  
24 477 U.S. 317, 326 (noting a district court’s power to enter sua sponte motions under Rule  
25 56). The Court is also obligated to confirm its own jurisdiction, *sua sponte* if necessary, and  
26 to dismiss the complaint if jurisdiction is lacking. See *Chapman v. Pier 1 Imports (U.S.) Inc.*,  
27 631 F.3d 939, 954 (9th Cir.2011) (en banc).

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1 Because the only remedy available to Langer under the ADA is injunctive relief, see  
2 *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002), and Defendant has presented evidence  
3 that the requested relief has already been put into effect, the ADA claim may not be  
4 justiciable. If the parking lot was ADA-compliant when Langer filed his complaint, then he  
5 lacks standing. *Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2001) ("Standing  
6 is determined by the facts that exist at the time the complaint is filed.") On the other hand,  
7 if the lot became ADA-compliant after Langer filed his complaint, then his case is moot. *City*  
8 *of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (defining mootness to include "when the  
9 challenged conduct ceases such that there is no reasonable expectation that the wrong will  
10 be repeated" and it therefore "becomes impossible for the court to grant any effectual relief  
11 whatever to the prevailing party") (citations and quotation marks omitted). Either way, if the  
12 Court lacks jurisdiction over his federal claim, it cannot exercise jurisdiction over  
13 supplemental state claims.

14 Here, Nicolas-Dollard has provided evidence showing that the parking lot was actually  
15 compliant with the ADA as of April 8, 2013 at the earliest, and August 30, 2014 at the latest.  
16 *Cf. Jones v. Blanas*, 393 F.3d 918, 926 (9th Cir. Cal. 2004) (holding that, when a pro se  
17 litigant opposes summary judgment, the court "must consider as evidence . . . all of [her]  
18 contentions offered in motions and pleadings, where such contentions are based on  
19 personal knowledge and set forth facts that would be admissible in evidence, and where  
20 [she] attested under penalty of perjury that the contents of the motions or pleadings are true  
21 and correct."). Langer must come forward with evidence that he has standing to bring this  
22 ADA claim and that his claim is not moot. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
23 249-50, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986) (holding that party opposing summary  
24 judgment may not rest on conclusory assertions, but must come forward with significantly  
25 probative evidence).

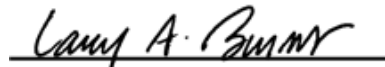
26 Langer is therefore **ORDERED TO SHOW CAUSE** why the Court should not grant  
27 summary judgment for Nicolas-Dollard or dismiss Langer's federal claim for lack of  
28 jurisdiction. Within **ten calendar days from the date this order is entered in the docket,**

1 Langer must file a memorandum of points and authorities not to exceed five pages  
2 explaining why Nicolas-Dollard's evidence does not establish the Court's lack of jurisdiction  
3 or her entitlement to summary judgment, and must submit evidence to show that the parking  
4 lot in question was not in compliance with the ADA's requirements both now and at the time  
5 the action was filed.

6 If Langer fails to show cause within the time permitted, this action will be dismissed  
7 for lack of jurisdiction.

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9 **IT IS SO ORDERED.**

10 DATED: September 25, 2014

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12 **HONORABLE LARRY ALAN BURNS**  
13 United States District Judge  
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